IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) Nos.838 and 839 of 2007
In Cr. Appeal No.442 of 2007.

Date of decision: 5.12.2007.

State of H.P. .....Petitioner

Vs.

Ashwani Kumar and Ors. .... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No.

For the Appellant : Mr. P.M. Negi, Deputy Advocate General.

For the Respondents : None.

***Kuldip Singh, Judge*.(Oral)**

Cr.MP(M) No.838 of 2007

This is an application for condonation of delay in filing the leave to appeal application. It has been submitted that proposal for filing the appeal was received vide letter dated 1.10.2007 of Government of Himachal Pradesh, Home Department. Thereafter filing of appeal was processed through various channels but appeal could not be filed for want of court fee stamps as the same were out of stock and budget had already exhausted. Budget was allocated during the week before closing of the Court for Dusherra Holidays and

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

in these circumstances some delay was caused in filing the appeal. As per Registry, delay is of seven days. It has been submitted that delay in filing the application for leave to file appeal is neither intentional nor willful but due to the reasons submitted above. The application is supported by affidavit of Roop Ram Sharma, Superintendent (Judicial) in the office of learned Advocate General. The delay appears to be unintentional and therefore, same is condoned. Application is disposed of.

Cr.MP(M) No.839 of 2007

This petition has been filed for seeking leave to file appeal against the judgment of acquittal dated 6.7.2007 passed by learned Judicial Magistrate Ist Class,Court No.III, Hamirpur in Police Challan No.8-I-2004/RBT No.63-II/2004 under Sections 341, 354, 294, read with Section 34 IPC.

The prosecution case in brief is that PW-2 complainant reported at Police Station, Hamirpur that on 1.10.2003 she took bus from Hamirpur to Mujhan at 4.30. PM for her home and alighted from the bus at Mujhan. She was walking from Mujhan to her house and at about 6.10. PM respondent No.1 along with two other boys obstructed her path. The respondent No.1 had caught hold her right hand and asked her to come along with two other boys. The respondent No.1 started pressing her breast upon which she started crying. At this the respondents threatened her with life. On this case was registered and after completion of investigation challan was filed against respondents in the Court, notice of accusation was put to

respondents under Sections 341, 354, 294 read with Section 34 IPC. The prosecution has examined four witnesses. PW-2 complainant has supported her version. She has stated that misbehavior of the respondents was brought to the notice of her parents. When her father enquired from the respondents, they abused and threatened him. She has admitted that there is a dispute between the parties for the last 5-6 years. She has also admitted that name of her brother is Sachin. The defence of the respondents is that the case against them is a counterblast of the police case which was lodged against Sachin at the instance of Anu sister of respondent No.1. PW-3 Anant Ram father of the complainant has admitted that the respondents have filed a case against Sachin but according to him the case is false and is a pressure tactics. He denied that on the day of occurrence on 1.10.2003 Anu had gone to attend the cattle in the cattle shed and his son Sachin tried to outrage the modesty of Anu. PW-3 has admitted the pendency of civil case between them. The prosecution has not examined PW Sachin. PW-5 Investigating Officer has admitted that sister of the accused has filed a case under Section 354 IPC against brother of the complainant. Ex.DW-3/A is the MLC of Anu showing four curved abrasions and two light abrasions over left shoulder and lateral aspect of neck. DW-3 Dr. Vipan Sharma has stated that these injuries are possible if someone is physically molested. The learned trial Magistrate has observed that complainant has made improvement in her case and does not inspire confidence. There is enmity between the parties, the

trial Court after due appreciation has given benefit of doubt to the respondents. No case has been made out for granting leave to file appeal, hence petition rejected.

Cr. Appeal No.442 of 2007 is accordingly disposed of.

(Kuldip Singh)
Judge.

December 5, 2007
(sks)